HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP S/S No. 1148/2003

Pushpendra Kumar Saxena

S/o Late Sh. Hari Shanker,

Vs

State Bank of India

Through its Managing Director

Central office Mumbay

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 27.2.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1148 OF 2003

Pushpendra Kumar Saxena,
S/o late Sh. Hari Shanker,
R/o C/o Janta Tent House,
Bara Bazar, Thakurdwara,
District Moradabad, U.P.
At Present-
R/o Mohalla Lahoriyan,
Kashipur (Udham Singh Nagar). ..... Petitioner.

Versus

1. State Bank of India,
   through its Managing Director.
   Central Office, Post Box No. 12,
   Mumbai-400021.
2. The Manager,
   State Bank of India,
   Zonal Office,
   Bareilly.
3. The Branch Manager,
   State Bank of India,
   Jaspur (Udham Singh Nagar). ..... Respondents.

Sri G.K. Verma, Advocate for the petitioner.
Sri D.S. Panti, Advocate for the respondents.

Dated: 27.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 1st March, 2001

passed by the respondent no. 4 by which the claim of the petitioner of appointment on the compassionate ground in dying in harness rules. The petitioner has further prayed for a writ of mandamus directing the respondents no. 1,2,3, and 4 to give appointment to the petitioner on the compassionate ground in dying in harness rules.

Brief facts giving rise to the present writ petition are that the father of the petitioner late Sri Hari Shankar was working as record keeper/Cashier in the branch of the respondent no. 2. He died in harness on 23.10.1999. Just after the death of the father of the petitioner, the mother of the petitioner approached the authorities concerned as well as the respondents through the respondent no. 4 the Branch Manager Jaspur and submitted the application for appointment of the petitioner on the compassionate ground along with all necessary documents but no heed was paid by the respondents on the grievance of the petitioner.

On 12.09.2000, the respondent no. 4 wrote a letter to the mother of the petitioner stating therein that the petitioner has become overage for being appointed and advised the mother to apply afresh for herself. The aforesaid letter is quoted below:-

''महोदय,

अनुकम्पा के आधार पर आपके पुत्र श्री पुश्पेन्द्र कुमार सक्सेना की बैंक में नियुक्ति के सम्बन्ध में अवगत कराना है कि आपका पुत्र आयु अधिक होने के कारण बैंक में नियुक्ति हेतु अपात्र हो गया है ।

2. इसलिए आपसे अनुरोध है कि बैंक में अनुकम्पा के आधार पर नियुक्ति हेतु आप आवेदन करें अथवा किसी पात्र परिवार हेतु आवेदन दें।

3. कृपया ध्यान दें कि 16.09.2000 तक आप या आपके परिवार के किसी योग्य सदस्य द्वारा आवेदन न करने पर आपका दावा निरस्त किया जा सकता है ।''

The mother of the petitioner has replied that she has applied or her son. The same in quoted below:-

''आवेदन है कि मेरे पति स्व0 श्री रविशंकर रिकार्ड कीपर/ रोकड़िया जसपुर शाखा में कार्यरत की मृत्यु 23.10.99 को हो गयी थी । उनकी मृत्यु के उपरान्त मैने अपने बेटे की अनुकम्पा के आधार पर नियुक्ति के लिए निवेदन किया है । इस सम्बन्ध में मै अपनी जाति के प्रमाण पत्र की छाया प्रति आपको उचित एवं आवश्यक कार्यवाही हेतु प्रेशित कर रही हूँ । आशा है आप इस दिशा में शीघ्र कार्यवाही कर मुझे कृताई करेंगे ।''

On the said letter the Bank Manager has sent a letter dated 16.11.2000 requiring an information from the petitioner. The same are quoted below:-

''(क) आपने स्वास्थ्य ठीक न होने के कारण बैंक में अनुकम्पा के आधार पर नियुक्ति नही लेना कहा है इसलिये आप अपनी रूग्णता सम्बन्धी कागजात जिसमें रूग्णता एवं उसकी अवधि दर्शाई हो प्रस्तुत करें ।

''(ख) आपके पुत्र श्री पुश्पेन्द्र ने वर्श 1991 में बी0ए0 प्रथमवर्ष की परीक्षा उत्तीर्ण की थी उसके पश्चात वर्ष 1997 में बी0ए0 द्वितीय वर्ष की परीक्षा उत्तीर्ण की तथा वर्ष 1998 में बी0ए0 किया । कृपया अवगत करायें कि उसने 6 वर्ष की अवधि में क्या कार्य किया ।

कृपया इस पत्र के आशय को अति आवश्यकीय समझें तथा तीन दिनों के अन्तर्गत इस प्रत्युत्तर अधोहस्ताक्षरकर्ता को दें ।''

The mother of the petitioner has replied the same that no service has been joined and there is no other resource available to the petitioner after the death of the bread-earner. The said reply is quoted below:-

''(ख) वर्ष 1991 से 1997 की 6 वर्ष की अवधि में मेरे पुत्र पुश्पेन्द्र कुमार द्वारा कोई भी नौकरी अथवा व्यवसाय नहीं किया गया क्योंकि मेरे पति स्व0 श्री हरि शंकर दिनांक 23.10.99 तक जीवित रहे है। और मेरे पति द्वारा जी आय होती थी उसी से समस्त परिवार का लालन पालन होता था ।''

The application of the petitioner was reflected with the endorsement that the petitioner has crossed the upper age limit as on the death of the father i.e. on 23.10.1999.

A counter affidavit has been filed by Sri D. S. Patni, learned counsel for the respondents, where in paragraph 4, 5 and 6 of the counter affidavit, he has stated the financial condition of the petitioner. Paragraphs 5 and 6 of the counter affidavit are quoted below:-

"5. That a bare perusal of the scheme would make it clear that the financial conditions of family isone of the important factor to be kept in the mind while considering the facts of giving appointment on compassionate ground to the respondent. As per the scheme, the financial condition of the family is an important criterion for deciding the proposal for compassionate appointment. As per the scheme the following factors should be taken into account for determining the financial conditions of the family:-

(i) Family pension.

(ii) Gratuity amount received.

(iii) Employees/ employers contribution to P.F.

(iv) Any compensation paid by the Bank or its welfare funds.

(v) Proceeds of L.I.C. Polices and other investments of the deceased employee.

(vi) Income of family from other sources.

(vii) Income of other family members from employment or otherwise.

(viii) Size of the family and liabilities, if any.

It is worthwhile to state that the petitioner has received gratuity of Rs. 1.56 lakhs and the provident fund of Rs. 2.61 lakhs. The petitioner has further been paid by the Bank as welfare fund Rs. 20,000/- and leave encashment of

Rs. 5,000/-. It is also stated that the petitioner has a house with the help of the Bank and is presently rented approximately 3,000/- per month situated at Thakurdwara, Moradabad.

6. *That it has been held in case of Umesh Kumar Nagpal Versus State of Haryana and others reported in JT 1994 (3) SCC 525 that whole object of granting compassionate appointment is to enable the family to tide over the sudden crises. The object is to give a member of such family, a post much less a post for post held by the deceased. The government of public authority concerned has to examine the financial condition of the family of he deceased, and it is only if it is satisfied that but for the provisions of the employment the family will not be able to meet the crises that a job is to be offered to the eligible member of the family, the dependent will humble refer to the said judgment at the time of hearing of the Writ petition."*

The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** *has observes as under:-*

> *"We consider that is must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."*

The Apex Court in the case of ***Umes Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** *has relied upon the judgment of* ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** *The relevant observations are quoted below:-*

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

In the case of ***General Manager Kumaon Jal Sansthan Nainital and another Vs. Smt. Laxmi Devi Special Appeal No. 63 of 2005 decided on 21.02.2006,*** *it has been held as under:-*

"*5. The case of the petitioner/ respondent is that the husband of the petitioner/ respondent rough was not regularly appointed but he was holding the post of Chaukidar/ Beldar for more than 12 years, therefore,e the husband of the petitioner/respondent was a Government*

Servant within the meaning of Clause (iii) of Rule 2(a) of U.P. Recruitment of Dependents of Govt. Servants Dying in Harness Rules, 1974.

6. Since the husband of the petitioner/respondent worked for more than 12 years, thus the impugned judgment passed by learned single judge does not suffer from any infirmity or illegality."

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in –harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

A writ of certiorari is issued quashing the order dated 01.03.2001 passed by the respondent no.4.

Respondents are directed to consider the appointment of the petitioner after considering the financial contrition of the petitioner's family and in the light of the pleadings of the parties within a period of three months from the presentation of the certified copy of the order.

Writ petition is allowed. No order as to costs.

(Rajesh Tondon, J.)

27.02.2006
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